(15,227.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No 489.

T. J. BRYAN, APPELLANT,

vs.

D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. MITCHELL, GEORGE W. MAUK, AND THE BANK OF NAPA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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1 In the District Court of the Second Judicial District of the Territory of Arizona in and for Maricopa County.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE E. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants.

To the said district court for Maricopa county:

T. J. Bryan, the plaintiff, complains of D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and the Bank of Napa, a corporation, and allege-:

1st. That the plaintiff is a resident of Maricopa county, Arizona Territory; that the defendants D. H. Pinney, Mary E. Pinney, and The Bank of Napa are each and all residents of Napa county, in the State of California, and that the defendants M. H. Sherman, George H. Mitchell, and George W. Mauk are each and all residents of the city of Phœnix, in said county of Maricopa, Arizona.

2nd. That the Bank of Napa is a corporation duly incorporated and existing under and by virtue of the laws of the State of California.

3d. That on the 29th day of June, 1887, plaintiff was the owner in fee and entitled to the possession of and ever since that date has been and now is the owner in fee and entitled to the possession of the following-described lands and premises, to wit:

2 All and every part of that certain block number ninety-eight (98), in the city of Phœnix, in said Maricopa county, Territory of Arizona, according to the map or plat of said city of Phœnix made by Wm. A. Hancock, surveyor, and which said map or plat is on file in the office of the county recorder of said Maricopa county, to which map or plat reference is hereby made for the size and location of said block number (98), the said premises being commonly known as block number (98), in the city of Phœnix.

4th. That afterward, to wit, on or about July 1st, 1887, defendants entered into said lands and premises and dispossessed plaintiff of the same and now unlawfully withholds possession thereof from plaintiff.

Wherefore plaintiff prays judgment for possession of land and premises, for costs of suit, and for general relief.

CAMERON H. KING,
E. J. EDWARDS,
W. STREET,
Att'ys for Plaintiff.

No. 760. Second district court, Maricopa county, Arizona Territory. T. J. Bryan, plaintiff, *vs.* D. H. Pinney *et al.*, defendants. Complaint in ejectment. Filed July 11th, 1887. J. E. Walker, clerk said district court. Cameron H. King, Goodrich, Street, Goodrich and Smith, att'ys for plaintiff.

3 In the District Court, Second Judicial District of Arizona, in and for Maricopa County.

T. J. BRYAN
vs.
D. H. PINNEY *et al.* } No. 760.

Plaintiff, by leave of the court first had, amends his original complaint on file in this action, and for amendment to said complaint alleges, in addition to what is stated in said original complaint—

That he claims title to the premises described in his original complaint by deed through Vina Brown, formerly Vina Bryan.

That said Vina Brown is and was the surviving widow of J. M. Bryan, deceased.

That said J. M. Bryan died intestate on the 29th day of August, 1883, without issue.

That the property in controversy was acquired by onerous title during the marriage of said Vina Brown and J. M. Bryan and is the community property of said J. M. Bryan and Vina Bryan, now Vina Brown.

That letters of administration on said J. M. Bryan's estate were granted to M. W. Kales on the 24th day of September, 1883; that said estate was fully administered upon, and the estate closed and the administrator finally discharged from his trust December the 6th, 1884.

CAMERON H. KING,
E. J. EDWARDS,
W. STREET,
Attorneys for Plaintiff.

BEN. GOODRICH, *Of Counsel.*

4 In the District Court of the Second Judicial District of the Territory of Arizona in and for Maricopa County.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants.

Action brought in the district court of the second judicial district of the Territory of Arizona in and for Maricopa county and the complaint filed in said Maricopa county, in the office of said district court.

In the name of the Territory of Arizona.

To D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa (a corporation), defendants, Greeting:

You are hereby summoned and required to appear in an action brought against you by the above-named plaintiff, T. J. Bryan, in

the district court of the second judicial district of the Territory of Arizona in and for Maricopa county, and answer the complaint therein filed with the clerk of this said court, at Phœnix, in said county, within ten days after the service upon you of this summons if served in this said county, or if served out of this said county and within this said judicial district, then within twenty days thereafter, or in all other cases, thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the district court of the second judicial district of the Territory of Arizona in and for Maricopa county this 11th day of July, 1887.

J. E. WALKER,
Clerk of said District Court.

5 OFFICE OF THE SHERIFF, COUNTY OF MARICOPA.

I hereby certify and return that I received this summons on the 11th day of July, A. D. 1887, and personally served the same on the 11th day of July, A. D. 1887, on M. H. Sherman, G. W. Mauk, and George H. Mitchell, defendants, by delivering to each of said defendants personally, at the county of Maricopa, a true copy of this summons.

Being unable to find the defendants D. H. Pinney, Mary E. Pinney, and The Bank of Napa, a corporation, I have served this summons upon each of them by publishing this summons for thirty days in the Arizona Gazette, a daily and weekly newspaper published in Maricopa county, said publications being made between the 14th day of July, 1887, and the 15th day of August, 1887.

A. J. HALBUT, *Sheriff*,
By H. C. ORME, *Deputy*.

Endorsed: No. 760, original. Second district court, Maricopa county, Arizona. T. J. Bryan, plaintiff, *vs.* D. H. Pinney *et al.*, defendants. Summons. Cameron H. King, E. J. Edwards, W. Street, att'ys for plaintiff. Filed Sept. 8th, 1887. J. E. Walker, clerk.

6 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants.

Now comes the above-named defendants and, answering plaintiff's complaint filed herein, allege:

I.

That this plaintiff should not be allowed to maintain this action without joining with him as plaintiffs one Cameron King and one

E. J. Edwards because prior to the commencement of this action, to wit, on the fourth day of July, 1887, said T. J. Bryan (the plaintiff herein) sold and conveyed by quitclaim deed to said Cameron King and E. J. Edwards an undivided one-half of his pretended interest and alleged title in and to the lands described in said complaint.

II.

For a further defense defendants allege that there is another action pending in the district court of the second judicial district of the Territory of Arizona in and for the county of Maricopa by the said T. J. Bryan for the same supposed cause of action and for the recovery of the same property set forth in the plaintiff's complaint in this action and against the said defendant-.

7 III.

For another defense defendants allege that plaintiff ought not to have and maintain this action because (1) these defendants have had and held peaceable and adverse possession under title of the lands described in plaintiff's complaint for more than three years next before the commencement of this action. (2) For another defense defendants allege that the pretended cause of action in said complaint set forth did not accrue at any time within three years next before the commencement of this action, and that the said pretended cause of action is barred by the provisions of sub. 4, sec. 14, act No. 100 of the 11th legislative assembly of Arizona.

IV.

For another defense defendants allege that the pretended interest and title through and by which plaintiff claims the land described in his complaint was acquired by said plaintiff while defendants were in the peaceable and adverse possession of said lands, and — which said lands or any part thereof plaintiff has never been in possession.

V.

Defendants further say that plaintiff ought not to be allowed to maintain this action because one M. W. Kales was heretofore, in the month of September, 1883, at the request of said Vina Bryan, appointed administrator of the estate of J. M. Bryan, deceased, by the probate court of Maricopa county, Arizona; that in due course of administration and at the proper time said M. W. Kales, as such administrator, exhibited to the said probate court (which court had sole jurisdiction in the premises) a full, true, complete, correct, and final account of all his actions as such administrator in connection with the administration of said estate; in which said final account was exhibited and set forth the action had and done by the said M. W. Kales as such administrator in relation to the lands and premises set forth in plaintiff's complaint; that the said Vina Bryan

(wife and heir-at-law of deceased) and this plaintiff, T. J.
8 Bryan, had full and legal notice of the presentation and filing of said account and of the time and place fixed for the hearing, settlement, and approval thereof; that the said Vina Bryan then or thereafter made no objection to the said account or any part thereof nor objected to its allowance, settlement, and approval, and the said account as exhibited, filed, and rendered was duly settled, approved, and allowed by the said probate court.

VI.

Defendant further alleges that said Vina Bryan well knew of the sale of the land set forth and described in plaintiff's complaint under and by virtue of the judgment rendered in the district court of the second judicial district of the Territory of Arizona in and for the county of Maricopa in the action wherein one M. W. Kales, administrator of the estate of J. M. Bryan, deceased, was defendant, and of the purchase of said lands by the defendant D. H. Pinney, and of his entry into possession thereof, and of his sale of part of said lands to said defendants The Bank of Napa, F. Q. Story, and M. H. Sherman, to none of which she at any time made any objections, but remained silent and acquiesced in the same for more than three years after said sales.

VII.

For a further answer to plaintiff's complaint defendants deny all and singular the matters and things in said complaint set forth and pleads not guilty thereby.

Having fully answered, defendants pray that plaintiff take nothing by this action, and that they have judgment for their costs.

D. H. PINNEY,
Attorney for Defendants.

BAKER & CAMPBELL, *Of Counsel.*

9 TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

W. L. Pinney, being duly sworn, says that he is the agent of D. H. Pinney, one of the defendants in the above-entitled action, who is not now within the Territory of Arizona; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief; that as to those matters he believes it to be true.

(Signed) W. L. PINNEY.

Subscribed and sworn to before me this 24th day of September, A. D. 1887.

J. E. WALKER,
Clerk Dist. Court.

10 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants.

Now comes the above-named defendants and, answering plaintiff's complaint filed herein, allege:

I.

That this plaintiff should not be allowed to maintain this action without joining with him as plaintiffs one Cameron King and one E. J. Edwards, because prior to the commencement of this action, to wit, on the fourth day of July, 1887, the plaintiff herein sold and conveyed to said Cameron King and E. J. Edwards an undivided one-half of his pretended interest and alleged title in and to the lands described in said complaint.

II.

For a further defense defendants allege that when this action was commenced there was another action pending in the district court of the second judicial district of the Territory of Arizona in and for the county of Maricopa, wherein said T. J. Bryan was plaintiff and against these defendants, for the supposed cause of action and for the recovery of the same land described in plaintiff's
11 complaint herein, which action is still pending.

III.

For another defense defendants allege that plaintiff ought not to have and maintain this action because defendants have had and held peaceable and advers- possession under title of the lands described in plaintiff's complaint for more than three years next before the commencement of this action.

IV.

For another defense defendants allege that the pretended interest and title through and by which plaintiff claims the land described in his complaint was acquired by said plaintiff while defendants were in the peaceable and adverse possession of said land, and of which said land or any part thereof plaintiff has never been in possession.

V.

For a further defense defendants say that they are not guilty of the supposed wrongs, injuries, and trespasses laid to their charge or any or either of them in manner and form as the said plaintiff hath thereof complained against them.

Having fully answered, defendants pray to be hence dismissed with their costs.

D. H. PINNEY,
Attorneys for Defendants.

BAKER & CAMPBELL, *Of Counsel.*

12 TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

D. H. Pinney, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

D. H. PINNEY.

Subscribed and sworn to before me this twenty-second day of December, A. D. 1887.

JOSEPH CAMPBELL,
Probate Judge, Maricopa County, A. T.

Filed Dec. 22nd, 1887.

J. E. WALKER, *Clerk.*

13 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

THOS. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY *et al.*, Defendants. } No. 760.

Come the defendants, by the leave of the court first had and obtained, and for their second amended answer to plaintiff say:

1.

That they are not guilty of the supposed wrongs and trespasses laid to their charge or either of them in the manner and form as the said plaintiff hath complained thereof against them.

2.

And for further answer to said complaint defendants say—

That plaintiff ought not to be allowed to recover the land and premises mentioned in his complaint because that, on the 14th day of March, 1883, one J. M. Bryan borrowed from M. W. Kales the sum of five hundred dollars and made, executed, and delivered to said M. W. Kales his promos-ory note therefor, payable on the 14th day of August, 1883, with interest at 1½ per cent. per month from date until paid.

That, to secure payment of said note, said J. M. Bryan made and executed a mortgage to said M. W. Kales upon the land and prem-

ises described in plaintiff's complaint, of which said lands
14 and premises said Bryan was then the *the* owner in fee; which said mortgage was duly acknowledged and recorded on the 14th day of March, 1883, in Book 2 of Mortgages, page 521, in the office of the county recorder of Maricopa county, A. T.

That thereafter, to wit, on the 29th day of August, 1883, said J. M. Bryan died intestate at said county of Maricopa, Arizona Territory, leaving surviving him Vina Bryan, his wife, his sole heir-at-law.

That thereafter, on September 24th, 1883, M. W. Kales was duly appointed by the probate court of Maricopa county, Arizona Territory, the administrator of the estate of said J. M. Bryan, deceased, and duly qualified as such administrator.

That the interest on said principal sum mentioned in said mortgage had been paid by said J. M. Bryan down to June 14th, 1883, but nothing more had been paid thereon.

That thereafter said note and mortgage became payable, to wit, on October 5th, 1883, and M. W. Kales, the mortgagee named in said mortgage, commenced an action in the district court of the second judicial district of the Territory of Arizona, in and for the county of Maricopa, wherein M. W. Kales was plaintiff and M. W. Kales, the administrator of the estate of said J. M. Bryan, deceased, was defendant, for the foreclosure of said mortgage.

That thereafter, to wit, on the 16th day of October, 1883, a judgment was made and rendered in said action by said court, wherein it was ordered, adjudged, and decreed that the lands and premises described in plaintiff's complaint be sold in satisfaction of said mortgage.

15 That thereafter an order of sale was issued out of said district court under such judgment, and the land and premises described therein, to wit, the lands and premises mentioned in plaintiff's complaint, were sold in the manner provided by law by the sheriff of Maricopa county.

That at such sheriff's sale M. W. Kales became the purchaser of the land and premises described in plaintiff's complaint for the sum of six hundred dollars; which said sum so paid the estate of J. M. Bryan, deceased, received and had the use and benefit of.

That said M. W. Kales sold and transferred his interest in said premises to the defendant D. H. Pinney and he paid therefor in good faith the sum of six hundred and fifty dollars.

That thereafter, on the 16th day of June, 1884, L. H. Orme, the sheriff making said sale, made, executed, and delivered to said D. H. Pinney a deed for the aforesaid premises.

That thereupon said D. H. Pinney went into possession of said premises and every part thereof and held and occupied and now holds and occupies all of said premises except those portions sold and conveyed by him as hereinafter set forth.

That on the 11th day of September, 1886, *when* he sold and conveyed a portion of said premises, to wit, lot ten, in said block ninety-eight, to the defendant The Bank of Napa for the sum of five

hundred dollars; which said sum was paid by said defendant The Bank of Napa in good faith.

That on the 18th day of November, 1886, said defendant
16 D. H. Pinney sold and conveyed a portion of said premises, to wit, lots one, three, five, seven, and nine, in said block ninety-eight, to F. Q. Story, who then became a purchaser thereof in good faith for the sum of one thousand dollars paid by him to said D. H. Pinney.

That thereafter, on the 6th day of December, 1886, said F. Q. Story sold and transferred to the defendant M. H. Sherman an undivided one-half interest in said last-mentioned premises, who then became the purchaser in good faith for the sum of five hundred dollars paid by him to said Story.

That said Story and Sherman went into possession of said premises and ever since the date last mentioned have held and now hold and occupy the last-mentioned premises.

That since said 16th day of June, 1884, said defendant D. H. Pinney has in good faith expended large sums of money in the payment of taxes upon said premises and in making improvements thereon, amounting in all to the sum of fifty-four hundred dollars.

That the said principal and interest mentioned in said mortgage has never been paid by the estate of said J. M. Bryan, deceased, nor by this plaintiff, nor has the same or any part thereof been tendered to the defendants by the plaintiff or any other person.

And the defendants further say that plaintiff ought not to be allowed to allege that he is the owner in fee or otherwise of the lands described in his complaint, or that he has any interest therein through or by any conveyance from one Vina Bryan, widow of J. M. Bryan, deceased, because on the 16th day of October, 1883, a judgment was duly and regularly made and entered in and
17 by the district court of the second judicial district of the Territory of Arizona in and for the county of Maricopa in an action wherein M. W. Kales was plaintiff and one M. W. Kales administrator of the estate of said J. M. Bryan, deceased, was defendant, whereby it was ordered, adjudged, and decreed in substance that the land described in the complaint in this action be sold at a sheriff's sale to satisfy the amount specified in said judgment; whereupon an order of sale was issued out of said district court on the 15th day of December, 1883, and said land was regularly sold at sheriff's sale thereunder, and that the same was never redeemed.

That said judgment is in full force and is unreversed.

And, further answering, defendants, and each of them, say that they and each of them purchased the property in controversy in good faith and for a valuable consideration and without any notice of any defect of title.

Defendant D. H. Pinney, further answering, says that he purchased the property in dispute of one M. W. Kales on the — day of January, 1884, and that Vina Bryan, the then widow of said J. M. Bryan, deceased, well knew of said purchase and sale and fully approved of the same.

That immediately upon deeds being made to said defendant under

said purchase he took entire possession of said premises and made lasting and valuable improvements thereon to the amount of about forty-nine hundred dollars, besides paying taxes, assessments, and making necessary repairs, amounting to the sum of fifty-four hundred dollars.

That during the whole time the said improvements were being made as aforesaid the said Vina Bryan, now Vina Brown,
18 resided on the opposite side of the street from said premises, saw said improvements being made from time to time, and to *at* which at no time made any objection or asserted any claim or interest in said land, but acquiesced in the same for more than three years.

Having fully answered, defendants pray that plaintiff take nothing by this action and that the defendants have judgment herein and for costs in this behalf expended.

(Signed) D. H. PINNEY,
Attorney for Defendant-.

Filed July *2x* 12th, 1890.

J. H. STOUT, *Clerk.*

19 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY —, Defendants.

No. 760. Demurrer to Original Answer.

Plaintiff demurs to paragraph 1 of defendants' original answer, wherein they set up the non-joinder of Cameron King and E. J. Edwards as parties plaintiff, and demurrer to said paragraph says that same is insufficient in law and does not state facts sufficient to constitute a good plea in abatement of or in bar of plaintiff's right to recover.

Plaintiff demurs to paragraph 4 of original answer, in which they set up that plaintiff acquired title to the land in controversy while defendants were in the peaceable possession thereof and of which plaintiff had never been in possession, and for demurrer says that said paragraph is insufficient and does not state facts sufficient to constitute a defense to plaintiff's right to recover.

Plaintiff demurs to paragraph 5 of defendants' original answer, wherein they set up the appointment of M. W. Kales as administrator of J. M. Bryan's estate; the presentation by him of his final account as administrator to the probate court of Maricopa county; the notice thereof to Vina Bryan, surviving widow of said J. M. Bryan, deceased; her failure to object to said account, and the allowance by said court of said account, for this, to wit:

That said paragraph does not state facts sufficient to constitute a defense to plaintiff's right to recover, nor is it a good plea in estoppel.

20 Plaintiff demurs to paragraph 6 of said original answer, wherein defendants set up the judgment of M. W. Kales,

adminstrator of J. M. Bryan's estate; the sale of the land in controversy thereunder; the purchase thereof by defendant Pinney; his entry into possession thereof; the sale of portions of said land to his codefendants, The Bank of Napa, Story, and Sherman; the knowledge thereof of Vina Bryan, and that she made no objections, but remained silent and acquiesced in same for more *the* than three years affer said sale, to wit:

That said paragraph does not state facts constituting any defense to plaintiff's action.

Plaintiff demurs to paragraph 7 of defendants' answer, wherein they set up the plea of not guilty, because, having set out their title specifically in their answer, they *be* confined to the title specifically set out and have thereby waived their plea of "not guilty."

GOODRICH & STREET,
Att'ys for Pl'ffs.

Filed July 7, 1890.

J. H. STOUT, *Clerk.*

21 In the District Court of the Second Judicial District of Arizona in and for Maricopa County.

T. J. BRYAN
vs.
D. H. PINNEY *et al.* } No. 760.

Now comes the plaintiff and demurs to the 3d paragraph of defendants' amended answer, wherein they set up the statutes of limitation of three years, and for demurrer says that said paragraph (3) three does not state any defense and is insufficient in law.

Plaintiff also demurs to the fourth paragraph of defendants' amended answer, wherein they set up as a defense that plaintiff claims the land described in plaintiff's complaint was acquired by said plaintiff while defendants were in the peaceable and adverse possession of said land and of which said land or any part thereof plaintiff has never been in possession, and for demurrer plaintiff says that said paragraph four is insufficient in law and does not state any defense to plaintiff's suit.

And of this demurrer prays for judgment of the court.

CAMERON H. KING,
E. J. EDWARDS,
W. STREET,
Att'ys for Plaintiff.

Filed Dec. 22nd, 188*a*.

J. E. WALKER, *Clerk.*

22 And be it further remembered that on the 12th day of July, 1890, the same being a regular term day of said court, the following proceedings, among others, were had and entered in the records of said court on page 195, M. B. "H:"

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PINNEY *et al.* } 760.

Comes now the plaintiff and files his demurrer to defendants' 2nd amended answer herein, which is as follows :

Plaintiff demurs to whole of paragraph 2 of defendants' second amended answer filed July 12th, 1890, wherein they set up the note of J. M. Bryan to M. W. Kales for $500.00, the mortgage given to secure the same, the appointment of said Kales as administrator of said J. M. Bryan's estate, the suit of M. W. Kales *vs.* M. W. Kales, administrator of J. M. Bryan, in the district court of Maricopa county, to foreclose said mortgage; the decree in said suit, the order of sale, then the sale thereunder, the purchase of the land in controversy by said Kales at said sale, the transfer by said Kales of his interest to defendant Pinney, the deed of the sheriff to said Pinney, the entry into possession by said Pinney, the sale of portions thereof to his codefendants, the expenditures of said Pinney in the levy of taxes and improvements thereon, the purchase and payment by defendant in good faith for valuable consideration without notice of defect in the title of said lands, the knowledge of Vina Bryan of defendants Pinney's purchase of said property, his entry into possession and making improvements thereon by said Pinney, the residence of Vina Bryan across the street, that she saw the improvements being made and made no objections, etc., and for demurrer say that said paragraph is insufficient in this :

It does not state facts sufficient to constitute defendants or either of them purchasers in good faith for valuable consideration without notice, but states conclusions of law merely ; that it does not state in what the improvements claimed to have been made con-
23 sists; that the matters stated do not estop Vina Brown or her grantee, the plaintiff herein, and are no defense to this action.

That there is no allegation that the silence or any other act of Vina Bryan misled defendants or either of them into doing anything to his or their injury.

That the matters therein stated, whether taken as a whole or in detail, constitute no defense to this action.

GOODRICH AND STREET,
Att'ys for Plaintiff.

And be it further remembered that on the 7th day of July, A. D. 1890, the same being a regular term day of said court, the following proceedings, among others, were had and entered of record on page 178 of M. B. " H : "

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vs.
PINNEY *et al.* }

This day came on to be heard plaintiff's demurrer to defendants' original answer, and the court, having heard the argument, orders

and adjudges that plaintiff's demurrer to that portion of said answer designated as paragraph 1, setting up, among other things, the non-joinder of Cameron King and E. J. Edwards as parties plaintiff; also that portion alleging the acquisition by plaintiff of the title of the lands in controversy while the defendants were in the peaceable and adverse possession thereof, and that plaintiff was never in possession; also that portion designated paragraph 4, setting up, among other things, the presentation to and the settlement and allowance of M. W. Kales' final account by the probate court of Maricopa county as administrator of J. M. Bryan's estate, the notice
24 thereof to Vina Bryan and her failure to object to the same; also that portion designated paragraph 5, setting up the judgment, order of sale, the sale thereunder, the purchase of the land in controversy, the entry into possession, the knowledge of Vina Brown, her silence, &c., the statutes of limitation of three years, be each and all sustained; to which defendants except; and that plaintiff's demurrer to that portion of said answer designated as paragraph 7, setting up the plea of not guilty, be, and is hereby, overruled; to which plaintiff excepts.

And be it further remembered that on the 12th day of July, A. D. 1890, the same being a regular term day of said court, the following order was made and entered of record in Minute Book "H," page 195:

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vs.
PINNEY *et al.*

This day came on to be heard plaintiff's demurrer to paragraph 2 of defendants' 2d amended answer, filed July 12th, 1890, and the court, having heard the argument of the counsel for the respective parties and being fully advised in the premises, orders and adjudges that said demurrer be, and the same is hereby, overruled; to which plaintiff excepts.

And be it remembered that on the 8th day of July, A. D. 1890, the same being one of the regular term days of said court, the following proceedings, among others, were had, to wit:

BRYAN
vs.
PINNEY *et al.* } 760.

Come now the parties, by their respective counsel, and, being ready for trial, a trial by jury was expressly waived by counsel for each party hereto. Mrs. Vina Brown and T. J. Bryan were sworn as witnesses for plaintiff and duly examined and cross-examined by either party.

D. H. Pinney and Mrs. Cotton and M. W. Kales were sworn and examined in behalf of defendants. Documentary evidence was introduced, and the cause taken under advisement by this court for decision.

25 T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants. } 760.

This cause came on regularly for trial on the 8th day of July, A. D. 1890, Messrs. D. H. Pinney and Baker & Campbell appearing for the defendants, and Messrs. Goodrich & Street and E. J. Edwards for the plaintiff.

A trial by jury having been expressly waived by the respective parties, the cause was tried before the court without a jury; whereupon witnesses upon the part of the plaintiff and defendants were duly sworn and examined and documentary evidence introduced by the respective parties, and, the evidence being closed, the cause was submitted to the court for consideration and decision, and, after due deliberation thereon, upon the first day of December, A. D. 1890, the court orders that judgment be entered herein in favor of the defendants.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged, and decreed that D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, the defendants, are not guilty of the wrongs and trespasses in manner and form as alleged against them in plaintiff's complaint; that the plaintiff, T. J. Bryan, recover nothing by this action, and that the defendants herein do have and recover of and from the plaintiff, T. J. Bryan, the sum of $15.80, defendants' costs and disbursements incurred in this action.

Done in open court, Dec. 12th, 1890.

26 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY *et al.*, Defendants. } No. 760.

I.

Plaintiff's First Bill of Exceptions.

Be it remembered that on the trial of this cause, after the plaintiff had put in all of his affirmative testimony aspiring to show the right of possession thereto by deeds of mesne conveyance from a common source, the defendants, in order to sustain the issues upon their side, among other things offered in evidence a mortgage given by J. M. Bryan to M. W. Kales, dated the 14th day of March, 1883; to the introduction of which the plaintiff then and there objected for the reason that upon its face it showed itself to be barred by the statutes of limitation, and for the further reason that it appeared upon its face that it had been satisfied, and for the further reason because it appeared from the pleadings that the mortgage and the

note which the mortgage was given to secure were merged into the judgment. In connection therewith the defendants offered in evidence the note set out in the mortgage; to which the plaintiff objected for the same reason as above; which objections were overruled by the court and said mortgage and note were admitted in evidence; to which ruling of the court and admission of evidence the plaintiff then and there excepted and presented this bill of exception to the court for allowance during the term and within ten days from the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

27 II.

Plaintiff's Second Bill of Exceptions.

Be it remembered that on the trial of this cause, in order to further maintain the issue in their behalf, among other things the defendants offered in evidence the judgment-roll in the case of M. W. Kales, administrator of the estate of J. M. Bryan, deceased, foreclosing the mortgage referred to in the bill of exceptions No. 1, and being case No. 326 of this court; to all of which the plaintiff objected upon the ground that it was a nullity on its face and because it appearing from the pleadings and from the judgment-roll that Kales was both plaintiff and defendant in the case, and that he was administrator of the estate and was practically vendor and vendee, trustee and beneficiary. The objection was overruled and the judgment-roll was admitted; to which ruling and admission of evidence the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance within the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

28 III.

Plaintiff's Third Bill of Exceptions.

Be it remembered that on the trial of this cause, in order to further maintain the issues on their behalf, the defendants offered in evidence the order of sale and sheriff's return thereon issued upon the judgment and decree contained in the judgment-roll in case No. 326; which offer the plaintiff objected to on the ground that the judgment upon which it is based is a nullity, and for the further reasons set out in bill of exceptions No. 2.

The objection was overruled, and the order of sale and the sheriff's return thereon *was* admitted in evidence; to which ruling of the court and admission of evidence the plaintiff excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

29 III.

Be it remembered that on the trial of this cause, in order to further maintain the issue upon their part, among other things the defendant offered in evidence the certificate of sale from L. H. Orme, sheriff, to M. W. Kales, which was objected to by the plaintiff upon — ground that the certificate of sale is not admissable for any purpose and because that particular certificate of sale, being based upon a void judgment, No. 326, cannot be the basis of any conveyance or be the basis of title of the defendants. The objection was overruled and the certificate of sale was admitted; to which ruling of the court and admission of evidence the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

IV.

30 *Plaintiff's Fifth Bill of Exceptions.*

Be it remembered that on the trial of this cause, in order to further maintain the issues upon their behalf, among other things the defendants offered in evidence the sheriff's deed from L. H. Orme, sheriff, to D. H. Pinney; to which the plaintiff objected upon the ground that the deed was based upon a void judgment, being case No. 326 of this court. The objection was overruled and the deed was admitted; to which ruling and admission the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

31 *Plaintiff's Sixth Bill of Exceptions.*

Be it remembered that on the trial of the cause, in order to further maintain the issues upon their behalf, among other things the defendants offered in evidence a deed from D. H. Pinney to the Bank of Napa for block 10, being part of the premises described in the complaint, and a deed to F. Q. Story for lots 1, 3, 5, 7, and 9, being part of the land and premises described, and a deed from Story to lots 1, 3, 5, 7, and 9, being a part of the said premises; to which deeds the plaintiff then and there objected for the reasons set out in bill of exceptions number 5. The objections were overruled and the deeds admitted in evidence; to which ruling of the court and admission of evidence the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

32 *Plaintiff's Seventh Bill of Exceptions.*

Be it remembered that on the trial of this cause, in order to further maintain the issues upon their behalf, among other things defendants offered in evidence a certified copy of the complaint in T. J. Bryan *vs.* L. H. Orme, M. W. Kales, and D. H. Pinney, filed in this court July 20th, 1887, as to this block 98; to the admission of which the plaintiff objected.

The ob*b*ection was overruled and the same was admitted; to which ruling of the court and admission of evidence the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

33 VIII.

Plaintiff's Eighth Bill of Exceptions.

Be it remembered that on the trial of this cause, in order to further maintain the issues on their behalf, among other things the defendant- offered in evidence from Mrs. Cotton, a witness for the defendant-, conversation between Mrs. Cotton and Mrs. Vena Brown in regard to block 98 and in regard to Mr. Cotton purchasing her redemption and in regard to D. H. Pinney purchasing her redemption; which testimony of the witness was objected to by the plaintiff on the ground that it was not justified by the evidence, is immaterial and irre*val*ent, and had after the sale of the property by the sheriff, and that at the time the conversation occurred there was being an administration upon the estate of J. M. Bryan, deceased, and by operation of law the property was in possession of the administrator.

The objection was overruled and she was allowed to give testimony in regard thereto, and answered that Mrs. Brown said she didn't want to redeem it and she had given up redeeming it, and further conversation in regard thereto; to which ruling of the court and admission of evidence the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

34 IX.

Plaintiff's Ninth Bill of Exceptions.

Be it remembered that on the trial of this cause, in order to further maintain the issues on their behalf, among other things the defendant- offered in evidence from Pinney, one of the defendants and a witness on his own behalf, to show that at the time he purchased the property in dispute from Kales that he had very little acquaintance with the people in this valley, and that he did not

know perhaps fifty men in the county at that time; to which the plaintiff objected. The objection was overruled and the defendant, on his own behalf, was allowed to give evidence; to which ruling of the court and admission of evidence plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days after the conclusion of the trial.

(Signed) JOSEPH H. KIBBEY, *Judge.*

35 X.

Plaintiff's Tenth Bill of Exceptions.

Be it remembered that on the trial of this cause and on the hearing of the plaintiff's general demurrer and special demurrer to this amended answer that the same was overruled and the amended answer as filed by the defendant- was allowed to stand; to which overruling of the plaintiff's demurrer the plaintiff then and there excepted and presented this his bill of exceptions to the court for allowance during the term and within ten days of the conclusion of the trial.

The foregoing bills of exceptions, numbered I, II, III, IV, V, VI, VII, VIII, IX, X, were presented to me on the 9th Dec., 1890, and by me on that day presented to counsel for the opposite party; and now, on the 5th Jan'y, 1891, having examined the same and found them correct, I have signed them.

(Signed) JOSEPH H. KIBBEY, *Judge.*

36 And be it further remembered that on the 12th day of December, A. D. 1890, the same being a regular term day of said court, the following proceedings, among others *among others*, were had and entered in the records of said court on page 457 of M. B. "H":

BRYAN *vs.* PINNEY *et al.* } 760. Motion for a New Trial.

Comes now the plaintiff herein, by his counsel, Messrs. Goodrich and Street, and moves the court for a new trial of this cause; which motion is in the following words, to wit:

And now comes the plaintiff and moves for a new trial herein and specifies the grounds upon which said motion is founded as follows, to wit:

I.

That the court erred in overruling the plaintiff's demurrer to defendants' amended answer.

That the court erred in overruling the plaintiff's demurrer to the plea in abatement.

The court erred in overruling plaintiff's demurrer to the plea that there was another action pending in the district court of the

second judicial district of the Territory of Arizona by the said T. J. Bryan for the same supposed cause of action and for the recovery of the same property set forth in the plaintiff's complaint in this cause and against these same defendants, and by overruling the demurrer to the defendants' plea of "not guilty."

And the court erred in admitting evidence for the defendant-
against the objections of the plaintiff, and plaintiff specifies
37 such as error.

II.

In allowing the defendant- to ask witness, Mrs. Brown, where she was living at the time of the foreclosure of the mortgage on block 98 and in permitting her answer thereto, that she was living in Phœnix; also in permitting all questions as to whether the witness, Mrs. Vina Brown, knew or heard that Pinney was going to purchase block 98 before he did purchase it, and as to all questions as to whether after the sale of block 98 she told any one that she did not want to redeem the property and the answer thereto.

III.

The court erred in admitting as evidence for the defendants, over the objections of the plaintiff, the mortgage dated the 14th day of March, 1883, of Jonathan M. Bryan to M. W. Kales, and the note which was thereby secured, as also the judgment-roll in the cause of M. W. Kales against M. W. Kales, administrator of the estate of J. M. Bryan, deceased, foreclosing the mortgage just referred to, being number 326 of this court, as also the order of sale issued upon the judgment and the decree contained therein, together with the return of the sheriff thereof and the certificate of sale from the sheriff to M. W. Kales, and the deed from the sheriff to D. H. Pinney, and the deed from Pinney to the Bank of Napa, and other deeds to the rest of the defendants for lots 1, 3, 5, 7, and 9, and being a portion of the lands and premises described in the plaintiff's complaint, as also the defendants' final account of administration and settlement of the estate of Jonathan M. Bryan, deceased, and probate records in said estate, and the record in the case of Bryan *vs.* Orme *et al.*, filed July 20th, 1884.

IV.

In admitting the testimony of T. J. Bryan, for the defendants, against the objection of the plaintiff, as to whether he was at the foreclosure sale or not, and the refusal of the court to strike out the testimony of the said T. J. Bryan, in which he says, in answer to
the question, "You were in town and did not go to see it?"
38 "I hadn't time; they got it off a little too quick." And to
the question, "You got there just as it was over?"

"I came in town a few minutes before the sale, and within twenty-five or thirty minutes they had sold the whole business. While I stepped around the corral to see Mrs. Smith and came back, calculating to bid on some of the property, I met a man, and he said,

You are a little too late; it is all sold, and that was inside of tw ıty or thirty minutes."

And the question as to whether he intended to bid on the same property or not and his answer thereto; also all evidence of D. H. Pinney as to whether he was acquainted with the people of Salt River valley, and his statement of the time he went into possession of the property in dispute and as to the amount and value of the improvements on the same, and as to where Mrs. Vina Brown lived at the time he went into possession, as also the testimony of Mr. Kales as to whether the mortgage had been paid or not and as to how it had been paid, and as to the purpose of the memorandum on the margin of the mortgage.

V.

The court erred in the matter of law in not ruling that the judgment founded on the mortgage from J. M. Bryan to Kales, in cause number 226 of this court, was a nullity, as also the order of sale based thereon, the return of the sheriff, the certificate of sale of the sheriff to Kales, the sheriff's deed following said certificate of sale, the deeds from D. H. Pinney to the Bank of Napa and other of these defendants, and all proceedings based upon said judgment were not a nullity, and in admitting the same as evidence against plaintiff's title and right of possession.

VI.

And the court erred in holding that he thought no presumption arose that M. W. Kales, as plaintiff, against M. W. Kales, administrator, in the foreclosure suit number 326, were one and the same person, and in holding that testimony tending to show that they were the same person would be evidence contradictory to the record.

39 And, specifying ground still further upon which this motion is founded, plaintiff says—

That the judgment herein is contrary to law and the evidence and unsupported by the evidence; that upon the evidence and under the law the judgment should have been for the plaintiff instead of for the defendants; that the whole evidence showed the fact to be that plaintiff was the owner of the title to the land in dispute and was entitled to the possession of it; that he had been ousted by defendants; that defendants were in possession against plaintiff's right of possession; that the judgment and certificate of sale from the sheriff and sheriff's deed by which the defendants got into possession are and were void and gave to defendants no right, title, or right to the possession of any part of said premises.

That the deed from Chenowith and wife to J. M. Bryan and from J. M. Bryan to Vina Brown and from Vina Brown — T. J. Bryan, together with the evidence of Vina Brown that she was the surviving widow and heir-at-law of J. M. Bryan, deceased, clearly established the title and the right to the possession of the premises in the plaintiff, and that the defendants being in possession under the

sheriff's deed, as based upon the fraudulent and void judgment in cause number 326, would give no right to the defendants to hold possession against the title and the right to the possession in the plaintiff.

He therefore moves that the judgment rendered on the 12th day of December, 1890, be set aside and that he have a new trial.

Dec. 12th, 1890.

GOODRICH AND STREET,
Att'ys for Plaintiff.

40 November Term, 1890.

760.

DECEMBER 16TH, 1890.

Comes now the counsel for the plaintiff, and, having filed his motion for a new trial herein on the — day of December, 1890, and having now argued said motion, the court overruled the motion. The court granted said plaintiff ten days in which to file his bill of exceptions and thirty days after the adjournment of the term in which to file his statement of facts, and the said plaintiff then and there gave due notice of his appeal to the supreme court of the Territory of Arizona from the judgment of this court and the order overruling the said motion for a new trial.

41 And the court, having heard said motion, orders that the said motion be, and is hereby, overruled and denied; to which ruling plaintiff duly excepted; and said plaintiff gave notice in open court of his appeal from said ruling of said court overruling said motion and from the judgment herein and the court granted ten days to plaintiff to file his bill of exceptions and his statement of facts to be filed within thirty days after the close of said term.

42 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants.

Plaintiff's Bill of Exceptions.

Be it remembered that on the 16th day of December, 1890, the motion for a new trial came on to be heard before the said court during the same term thereof at which judgment was rendered, which motion was filed within two days after the rendition of the judgment and is as follows, to wit:

Title of Court and Cause.

And now comes plaintiff and moves for a new trial herein and specifies the grounds upon which said motion is founded as follows, to wit:

I.

That the court erred in overruling the plaintiff's demurrer to defendants' amended answer; that the court erred in overruling plaintiff's demurrer in the plea in abatement.

The court erred in overruling plaintiff's demurrer to the plea that there was another action pending — the district court of the second judicial district of the Territory of Arizona by the *the* said T. J. Bryan for the supposed cause of action and for the recovery of the same property set forth in the plaintiff's complaint
43 in this case and against these same defendants and by overruling the demurrer to the defendants' plea of "not guilty."

And the court erred in admitting evidence for the defendants against the objections of the plaintiff, and plaintiff specifies as such error:

II.

In allowing the defendants to ask the witness Mrs. Brown where she was living at the time of the foreclosure of the mortgage on block 98, and in permitting her answer thereto that she was living in Phœnix.

Also in permitting all questions as to whether the witness Mrs. Vina Brown knew or heard that Pinney was going to purchase block 89 before he did purchase it, and as to all questions as to whether after the sale of block 98 she told any one that she did not want to redeem the property and her answer thereto.

III.

The court erred in admitting as evidence for the defendants, over the objections of the plaintiff, the mortgage dated the 14th day of March, 1883, of Jonathan M. Bryan to M. W. Kales and the note which was thereby secured, as also the judgment-roll in the cause of M. W. Kales against M. W. Kales, administrator of the estate of J. M. Bryan, deceased, foreclosing the mortgage just referred to, being number 326 of this court, as also the order of sale issued upon the judgment and the decree contained therein, together with the return of the sheriff thereof, and the certificate of sale from the sheriff to M. W. Kales, and the deed from the sheriff to D. H. Pinney, and the deed from Pinney to the Bank of Napa, and other deeds to the rest of the defendants for lots 1, 3, 5, 7, and 9, being a portion of the lands and premises described in the plaintiff's complaint, as also the defendants' final account of administration and settlement of the estate of Jonathan M. Bryan, deceased, and probate records in said estate, and the records in the case of Bryan *vs.* Orme *et al.*, filed July 20, 1884.

44 IV.

In admitting the testimony of T. J. Bryan for the defendants, against the objections of the plaintiff, as to whether he was at the foreclosure sale or not, and the refusal of the court to strike out the

testimony of the said T. J. Bryan, in which he says in answer to the question, "You were in town and did not go to see it?"

"I hadn't time. They got it off a little too quick."

And to the question, "You got there just as it was over?"

"I came in town a few minutes before the sale, and within twenty-five minutes or thirty minutes they had sold the whole business.

While I stepped around the corral to see Mrs. Smith, came back calculating to bid on some of the property, I met a man, and he said, You are a little too late. It is all sold; and that was inside of twenty or thirty minutes."

And the question as to whether he intended to bid on the same property or not and his answer thereto.

Also all evidence of D. H. Pinney as to whether he was acquainted with the people of the Salt River valley, and his statement of the time he went into the possession of the property in dispute, and as to the amount and value of the improvements on the same, and as to where Mrs. Vina Brown lived at the time he went into possession, as also the testimony of Mr. Kales as to whether the mortgage had been paid or not and as to how it had been paid, and as to the purpose of the memorandum on the margin of the mortgage.

V.

The court — in the matter of law in not ruling that the judgment founded upon the mortgage from J. M. Bryan to Kales, in cause number 326 of this court, was a nullity, as also the order of sale based thereon, the return of the sheriff, the certificate of sale of the sheriff to Kales, the sheriff's deed following said certificate of
45 sale, the deed from D. H. Pinney to the Bank of Napa and other of these defendants, and all proceedings based upon said judgment were not a nullity, and in admitting the same as evidence against plaintiff's title and right of possession.

VI.

And the court erred in holding that he thought no presumption arose that M. W. Kales, as plaintiff, against M. W. Kales, administrator, in the foreclosure suit number 326, were one and the same person, and in holding that testimony tended to show that they were the same person would be evidence contradictory to record.

And, specifying grounds still further upon which this motion is founded, plaintiff says—

That the judgment herein is contrary to law and the evidence and unsupported by the evidence; that upon the evidence and under the law the judgment should have been for the plaintiff instead of for the defendants; that the whole evidence showed the fact to be that plaintiff was the owner of the land in dispute and was entitled to the possession of it; that he had been ousted by defendants; that defendants were in possession against plaintiff's right of possession; that the judgment and certificate of sale from the sheriff and sheriff's deeds, by which the defendants got into possession, are and were

void, and gave defendants no right, title or right, to the possession of any part of said premises; that the deed from Chenowith and wife to J. M. Bryan and from J. M. Bryan to Vina Brown and from Vina Brown to T. J. Bryan, together with the evidence of Vina Brown that she was the surviving widow and heir-at-law of J. M. Bryan, deceased, clearly established the title and the right to possession of the premises in the plaintiff, and that the defendants, being in possession under the sheriff's deed as based upon the fraudulent and void judgment in cause number 326, would give no right to the defendants to hold possession against the title and the right to the possession in the plaintiff.

46 He therefore moves that the judgment rendered on the 12th day of December, 1890, be set aside and that he have a new trial.

Dec. 12th, 1890.

GOODRICH & STREET,
Att'ys for Plaintiff.

Yet, notwithstanding the consideration of all said testimony produced upon the trial and all objections set out in motion for a new trial, the court overruled plaintiff's motion for a new trial and allowed the judgment, which was therefore entered on the 12th day of December, 1890, to stand as a valid judgment; which is as follows, to wit:

In the District Court of the Second District (Judicial) of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants. } No. 760.

This cause came on regularly for trial on the 8th day of July, 1890, Messrs. D. H. Pinney and Baker & Campbell appearing for the defendants and Messrs. Goodrich & Street and E. J. Edwards for the plaintiff.

A trial by jury having been expressly waived by the respective parties, the cause was tried before the court without a jury; whereupon witnesses upon the part of the plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties, and, the evidence being closed, the

47 cause was submitted to the court for consideration and decision, and after due deliberation thereon the 12th day of December, 1890, the court orders that judgment be entered herein in favor of the defendants.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged, and decreed that D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, the defendants, are not guilty of the

wrongs and trespasses in manner and form as alleged against them in plaintiff's complaint; that the plaintiff, T. J. Bryan, recover nothing by this action, and that the defendants herein do have and recover of and from the plaintiff, T. J. Bryan, the sum of $15.80, defendants' costs and disbursements incurred in this action.

Done in open court December 12th, 1890.

To all of which ruling, the overruling of plaintiff's motion for a new trial, and the allowing of said judgment to stand, the plaintiff then and there excepted and presented this his bill of exceptions during the term and within ten days of the conclusion of the trial in that particular to the court for allowance, and the same was allowed.

Presented to me on the 23d day of December, A. D. 1890, and by me on that day presented to counsel for the opposite party, and now, having examined the same and found it correct, I have, this 5th day of January, A. D. 1891, *I have* signed the same.

(Signed) JOSEPH H. KIBBEY, *Judge.*

48 And be it further remembered that on the 13th day of March, A. D. 1891, the same being a regular term day of said court, the following proceedings, among others, were had and entered in the records of said court on page 12, M. B. "I:"

BRYAN
vs. } 760.
PINNEY *et al.*

Comes now the plaintiff, by his counsel, Hon. Webster Street, and files his statement of facts as follows, to wit:

Statement of Facts.

This is an action of ejectment for block 98 of the city of Phœnix, situated in Maricopa county, Arizona, brought by the plaintiff against the defendants in the district court of the second judicial district of the Territory of Arizona, county of Maricopa, upon a complaint filed therein on the 11th day of July, 1887.

The defendants filed their respective answers.

The cause came on regularly for trial at a regular term of said court.

The plaintiff and defendants appeared and were represented by their respective counsel.

A jury was expressly waived by all the parties to the action and the cause was tried to the court.

The pleadings of the respective parties were read to the court; whereupon the evidence was adduced, and showed the following facts:

On the 10th day of October, 1879, John A. Chenowith and Mary M. Chenowith, his wife, were the owners of and on that day conveyed to J. M. Bryan lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, in block 98, being
49 the whole of block 98, in the town of Phœnix, county of Maricopa, according to the official plat of said town on file

in the office of the county recorder of said county, by warranty deed duly made, executed, and delivered on that day and recorded in Book 5 of Deeds, page 221, records of Maricopa county, on the 10th day of October, 1879.

At that time the said J. M. Bryan was a married man and married to Vina Bryan, whose name appears hereafter as Vina Brown.

That afterwards, to wit, on the 29th day of August, 1883, said J. M. Bryan died without children and left as his sole heir the said wife, Vina Bryan, who became his heir and widow.

That afterwards, to wit, on the 13th day of September, 1883, the said M. W. Kales filed his application for letters of administration in probate court of Maricopa county, Territory of Arizona, wherein said Bryan resided at the time of his death and where his estate was situated, and such proceedings were had thereon that the said M. W. Kales was duly appointed and became the administrator of said estate on the 24th day of September, 1883, and continued as such until the administration was closed, December 6th, 1884. Such proceedings were had in the administration of said estate that on the 6th day of December, 1884, the administration of said estate was settled and closed and the administrator was discharged from said trust. Said block 98 was not distributed by any such probate proceedings or by the administrator in the administration of said estate.

That afterwards the said Vina Bryan, the widow — said J. M. Bryan, deceased, married one R. D. Brown.

That afterwards, to wit, on the 29th day of June, 1887, the said Vina Bryan, in her name as it then was, Vina Brown, conveyed to this plaintiff, T. J. Bryan, by deed of conveyance granting, conveying, remising, releasing, and forever quitclaiming all of block 98, the premises aforesaid, which deed was dated on that day and duly acknowledged and recorded on the 30th day of June, 1887, in Book 15 of Deeds, page 32, Maricopa county records, for the consideration of $1.00.

Said deed from J. A. Chenowith and Mary Chenowith, his wife, dated the 10th day of October, 1879, is a common source of title both for plaintiff and defendant.

II.

That during his lifetime and while he was still married to the said Vina Bryan, to wit, on the 14th day of March, 1883, said J. M. Bryan made, executed, and delivered a promissory note to one M. W. —— for the sum of five hundred ($500.00) dollars, payable on the 14th day of September, 1883, with interest at the rate of one and one-half per cent. per month, and at the same time and while he was owner of said block he made, executed, and delivered to the said Kales a mortgage of all of said block 98 for the purpose of securing the said promos-ory note; which said mortgage was duly acknowledged and delivered to said Kales and recorded on the 14th day of said March, 1883, in Book 2 of Mortgages, at page 521, in the records of Maricopa county.

Defendants claim title and right of possession to the premises by

sheriff's deed, based upon an order of sale issued out of the district court of the second judicial district of the Territory of Arizona on an action founded on the said promos-ory note and mortgage executed by said Johnathan M. Bryan to said M. W. Kales on the 14th day of March, 1883; the facts of which suit and action are as follows:

Said M. W. Kales, while he was administrator of the estate of J. M. Bryan, deceased, as aforesaid, and while he was the owner of said note and mortgage, brought an action in said district court by a complaint filed on the 28th day of September, 1883, and *in* within four (4) days after he was appointed administrator of the estate of J. M. Bryan, deceased, defendant, and in which he complained upon said promos-ory note and said mortgage and asked for judgment upon the note and foreclosure of the mortgage and the sale
51 of the premises thereby conveyed to satisfy said judgment.

A summons was duly issued out of said court on the 5th day of October, 1883, and duly served on M. W. Kales, administrator, the defendant named in the action, on the same day, and his *pendens* was duly filed in the office of the county recorder of Maricopa county, A. T., and afterwards, on the 6th day of October, 1883, the said M. W. Kales, administrator, as defendant, made answer and admitted each and every allegation in said complaint, and consented that judgment or decree be entered in accordance with the prayer thereof.

That afterwards, to wit, on the 9th day of October, 1883, the same being a regular day of the term of said court, said cause came on for trial, and, the same having been tried and duly submitted, the said court, on the 16th day of October, 1883, rendered judgment against M. W. Kales, administrator of the estate of J. M. Bryan, deceased, defendant, in favor of M. W. Kales, for the sum of $529.37, and entered a decree to foreclose said mortgage and ordered that block 98 be sold to satisfy said judgment.

That afterwards, to wit, on the 8th day of November, 1883, an order of sale for the sale of said premises was issued out of the said court on said judgment and delivered to the sheriff of Maricopa county for execution.

That afterwards, to wit, on the 15th day of December, 1883, said sheriff of Maricopa county, having advertised said block 98 for sale under said judgment for the time *s*prescribed by law, did offer the same for sale to the highest bidder for cash, and did then sell the same to the said M. W. Kales for the sum of six hundred ($600.00) dollars, that being the highest price bid, and did then issue to said M. W. Kales a certificate of sale therefor, which certificate of sale was sold and assigned to D. H. Pinney for the sum of six hundred and fifty ($650.00) dollars on the thirty-first day of January, 1884.

That afterwards, to wit, on the 16th day of June, 1884,
52 the said sheriff o*d*f Maricopa county made, executed, and delivered to D. H. Pinney, the assignee of said certificate of sale, a sheriff's deed to said property, which deed was recorded on the same day in Book 10 of Deeds, page 327, Maricopa county records.

That afterwards, to wit, on the 10th day of September, 1886, the said D. H. Pinney made, executed, and delivered to the Bank of Napa, a corporation, for the consideration of five hundred ($500.00) dollars, lot 10 of said block 98.

That afterwards, to wit, on the 10th day of November, 1886, the said D. H. Pinney and Mary E. Pinney, his wife, made, executed, and delivered by deed of conveyance to F. Q. Story, for the consideration of one thousand ($1,000.00) dollars, lots 1, 3, 5, 7, and 9, in said block 98, which said deed was recorded January 5th, 1887, in Book 13 of Deeds, page 352, Maricopa county records.

That afterwards, to wit, on the 6th day of December, 1886, said F. Q. Story made, executed, and delivered a deed of conveyance to M. H. Sherman, for the consideration of five hundred (500) dollars, all of lots 1, 3, 5, 7, and 9, in block 98, which said deed was recorded June 1st, 1887, in Book 18 of Deeds, page 66, records of Maricopa county.

III.

To prove which facts on the part of the defendants, they introduced in evidence:

1st. A mortgage conveyance for block 98, city of Phoenix, executed by J. M. Bryan on the 14th day of March, 1883, to M. W. Kales to secure the payment of a note given by J. M. Bryan *on the 14th day of March, 1883, to M. W. Kales to secure the payment of a note given by J. M. Bryan* to M. W. Kales, bearing same date, for five hundred ($500.00) dollars, with interest at one and one-half per cent per month (1½%), payable September 14th, 1883, which mortgage was recorded March 17th, 1883, in Maricopa county records.

53 2nd. The judgment-roll in the case of M. W. Kales against M. W. Kales, administrator of the estate of J. M. Bryan, deceased, foreclosing the mortgage just referred to, being case No. 326 of the second district court of Arizona, county of Maricopa.

3d. The order of said sale issued upon the judgment and decree contained in the judgment-roll in said case No. 326, dated the 8th day of November, 1883, together with the return of the sheriff thereon, which showed that on the 15th day of December, 1883, the sheriff of Maricopa county sold said block 98 to M. W. Kales for six hundred ($600.00) dollars, and that he paid that amount for it.

4th. The sheriff's certificate of sale from said sheriff, L. H. Orme, to M. W. Kales, dated December 15th, 1883, for said block 98, and the assignment thereof to D. H. Pinney for six hundred and fifty ($650.00) dollars, dated January 31st, 1884.

5th. The sheriff's deed from said sheriff, L. H. Orme, to D. H. Pinney for said block 98, dated and executed June 16th, 1884, and recorded June 20th, 1884, Maricopa county records.

6th. A grant, bargain, and sale deed from Daniel H. Pinney to the Bank of Napa, a corporation, executed the 10th day of September, 1886, for lot 10 of said block *Ie*, consideration five hundred

dollars ($500 00), and recorded September 14th, 1886, in Maricopa county records.

7th. A grant, bargain, and sale deed from Daniel H. Pinney and Mary E. Pinney, his wife, to F. Q. Story, executed on the 22nd day of November, 1886, for lots 1, 3, 5, 7, 9, in said block 98, consideration one thousand ($1,000.00) dollars, and recorded January 5th, 1887, Maricopa *C* county records.

8th. A grant, bargain, and sale deed from F. Q. Story to M. H. Sherman, executed on the 6th day of December, 1886, for lots 1, 3, 5, 7, and 9, in said block 98, consideration five hundred ($500.00) dollars, recorded June 1st, 1887, in Maricopa county records.

54 IV.

It was proven that M. W. Kales, the plaintiff in said suit No. 326, was the same person as M. W. Kales, administrator, the defendant in said suit, but that D. H. Pinney at the time of his purchase had no knowledge that they were one and the same person except such notice of that fact that the record imparted.

That Daniel H. Pinney was the same person as D. H. Pinney, and that he was judge of the second district court of Arizona, county of Maricopa, at the time said cause was pending in said court and was the judge thereof before the judgment therein was rendered and whose name appears in the teste to the order of sale on such judgment.

D. H. Pinney testified that Mr. Alsop, an attorney of the court, came into court and represented one party and Messrs. Tweed & Hancock, attorneys, represented another party and agreed upon a decree in the case, and that he, Pinney, signed it without reading it or knowing what was in it; that he knew Kales, the banker, but did not know his name was M. W. Kales. He knew no other Kales.

At the time of the commencement of this action the defendants were in possession of said premises.

On the part of defendants it was also proven that M. W. Kales was appointed administrator of Johnathan M. Bryan's estate at the suggestion of Vina Brown; that at the time of foreclosure and sale of block 98 and for a long time afterwards she lived across the road from said land and while defendant Pinney was erecting the improvements thereon; that after said foreclosure sale she informed one Mrs. Cotton of her desire and intention of redeeming said land and afterwards declined to do so; that before time of redemption expired she (Vina Bryan) signed a paper for the purpose of allowing plaintiff to redeem.

55 That T. J. Bryan was present in Phœnix on day of foreclosure sale for the purpose of bidding on some of the property sold, but got to sale too late; that he afterwards tried to redeem block 98.

That Vina Bryan informed Mrs. Cotton after said sale that she was going to redeem block 98, but when informed that defendant Pinney was about to buy it she said she was glad of it and did not

want to redeem it; but it was not proven that the same was communicated to the defendant D. H. Pinney.

None of said property was sold by the administrator of the estate of Johnathan M. Bryan in the course of administration.

That the note and mortgage executed by said J. M. Bryan to M. W. Kales has not been paid or satisfied in any way unless it has been paid or satisfied by virtue of the aforesaid sale.

That between the time of the purchase of said premises by D. H. Pinney and the date of commencement of this action said Pinney expended the sum of $400.00 in taxes and the sum of $4,800.00 in improvements on said premises.

That said premises were sold at said sheriff's sale for their market value.

The foregoing is agreed upon as the statement of facts in the said case.

GOODRICH & STREET AND
E. J. EDWARDS,
Att'ys for Plaintiff.
D. H. PINNEY AND
BAKER & CAMPBELL,
Att'ys for Def.

Examined, found correct, signed, and approved 13th March, 1891.
JOS. H. KIBBEY, *Judge.*

56 In the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Maricopa.

T. J. BRYAN, Plaintiff,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, George H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants. } No. 760.

Whereas, in the above numbered and entitled cause, pending in the district court of the second judicial district in and for Maricopa county and at a regular term of said court, to wit, on the twelfth day of December, A. D. 1890, the said D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, recovered judgment against the said T. J. Bryan "that the defendants are not guilty of the wrongs and trespasses in manner and form as alleged against them in plaintiff's complaint; that plaintiff, T. J. Bryan, recover nothing by this action, and that the defendants herein do have and recover of and from the plaintiff, T. J. Bryan, the sum of $15.80, defendants' costs and disbursements in this action;" from which judgment the said T. J. Bryan has taken an appeal to the supreme court of the Territory of Arizona and desires to suspend the execution of said judgment during the pendancy of said appeal:

Now, therefore, we, T. J. Bryan, as principal, and W. T. Smith and C. H. Gray, as sureties, acknowledge ourselves bosnd to pay

D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H.
57 Mitchell, George W. Mauk, and the Bank of Napa, a corporation, the sum of five hundred dollars, conditioned that the said T. J. Bryan shall prosecute his appeal with effect and will pay all costs which have accrued in the court below and which may accrue in the appellate court, and in case the judgment of the appellate court shall be against him that he will perform its judgment and decree and will pay all such damages as may be awarded against him on the appeal.

T. J. BRYAN. [SEAL.]
W. T. SMITH. [SEAL.]
C. H. GRAY. [SEAL.]

TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

W. T. Smith and C. H. Gray, the sureties, being duly sworn, each for himself says that he is a resident freeholder of Maricopa county, and that he is worth the sum of five hundred dollars, the amount for which he has signed the foregoing bond, over and above all his just debts and liabilities, exclusive of property exempt from execution.

W. T. SMITH.
C. H. GRAY.

Subscribed and sworn to before me this 19th day of December, A. D. 1890.

FRANK COX,
[NOTARIAL SEAL.] *Notary Public.*

This bond on appeal was submitted to me on the 21st day of January, A. D. 1891, and by me approved on that day both as to amount and the form of the bond and the sufficiency of the sureties, and filed by me on the 21st day of January, A. D. 1891, as appeal bond in this case.

J. H. STOUT, *Clerk.*

58 And be it further remembered that on the 9th day of April, 1891, the same being a regular term day of said court, the following proceedings, among others, were had and entered in the records of said court, on page 30, M. B. "I:"

T. J. BRYAN }
vs.
PINNEY *et al.* }

Comes now the plaintiff herein and files his assignment of errors in the following form and words, to wit:

Assignment of Errors.

Plaintiff and appellant assigns for errors as follows, to wit:

First assignment of errors.

The court erred in allowing as evidence the mortgage given by J. M. Bryan to M. W. Kales, dated the 14th of March, 1883, and the note set out in the mortgage, as specified in plaintiff's first bill of exceptions.

Second assignment of errors.

In allowing as evidence the judgment-roll in the case of M. W. Kales against M. W. Kales, administrator, being district court case No. 326, as specified in plaintiff's second bill of exceptions.

Third assignment of error.

In allowing as evidence the order of sale and sheriff's return thereon issued on the judgment and decree in case No. 326, as specified in plaintiff's third bill of exceptions.

59 Fourth assignment of errors.

In allowing as evidence the certificate of sale from L. H. Orme to M. W. Kales, as specified in plaintiff's fourth bill of exceptions.

Fifth assignment of error.

In allowing as evidence the sheriff's deed from L. H. Orme, sheriff, to D. H. Pinney, as specified in plaintiff's fifth bill of exceptions.

Sixth assignment of error.

In allowing as evidence the deed from D. H. Pinney to Bank of Napa for part of premises described and a deed to F. Q. Story for a part of premises described and a deed from Story for a part of premises described, as specified in plaintiff's sixth bill of exceptions.

Seventh assignment of error.

In allowing in evidence a certified copy of the complaint in the case of T. J. Bryan against L. H. Orme, M. W. Kales, and D. H. Pinney, filed July 20th, 1887, for block 98, as specified in plaintiff's seventh bill of exceptions.

Eighth assignment of error.

In allowing in evidence a conversation between Mrs. Cotton and Mrs. Vina Bryan in regard to block 98, in regard to Mr. Cotton purchasing her redemption, and in regard to *to* D. H. Pinney purchasing her redemption, as is specified in plaintiff's eighth bill of exceptions.

Ninth assignment of error.

In allowing as evidence from the witness Pinney in his
60 own behalf that at the time he purchased the property he had but little acquaintance with the people *with the people* of Salt River valley, and that he didn't know, perhaps, fifty men in the county at the time, as specified in plaintiff's ninth bill of exceptions.

Tenth assignment of error.

In overruling plaintiff's general demurrer and special demurrer to the amended answer and in allowing the amended answer to stand, as specified in plaintiff's tenth bill of exceptions, and in overruling demurrer filed December 22nd, 1887, and in overruling the demurrer filed July 7th, 1890, and in overruling the demurrer entered on records of court, page 195, on July 12th, 1890.

Eleventh assignment of error.

In overruling plaintiff's motion for a new trial and in holding that the errors alleged to have been committed by the court, as specified in paragraphs 1, 2, 3, 4, 5, and 6 in plaintiff's bill of exceptions to the overruling of his motion for a new trial, were not errors sufficient to grant a new trial, either collectively or singly.

12th assignment of error.

In rendering judgment for the defendant instead of for the plaintiff on the whole evidence, and for that the judgment is contrary to the law and the evidence and is unsupported by the evidence.

Thirteenth assignment of error.

The court erred in not rendering a judgment for the plaintiff instead of for the defendant upon the whole evidence, for that the whole evidence shows that under the law the plaintiff was the owner and entitled to the land in dispute and was entitled to the possession of it and had been ousted therefrom by defendants, and that defendants were in possession against plaintiff's right of possession; that the judgment and certificate of sale from the sheriff and the sheriff's deed and all subsequent deeds thereon by which defendants got into possession were void and gave defendants no right or title or right to the possession of any part of the premises.

61 Wherefore this plaintiff and appellant prays that the judgment of the district court be set aside.

Second. That this supreme court render judgment as the court below should have rendered and adjudge that this plaintiff have judgment against the defendant for the possession of the premises in dispute.

Third. Or if this supreme court shall not proceed to render

judgment, then that judgment of the district court be reversed and the plaintiff have a new trial.

GOODRICH & STREET,
E. J. EDWARDS,
Att'ys for Appellants.

62 TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

I, C. H. Gnapp, clerk of the district court, third judicial district of the Territory of Arizona in and for the county of Maricopa, do hereby certify the foregoing to be a full and correct transcript of the judgment-roll, the pleadings, summons, minute entries, bill of exceptions, statement of facts, motion for a new trial, order overruling the same, the final judgment, motion of appeal in open court, bond on appeal and assignment of errors, and of the proceedings had in the action entitled T. J. Bryan, plaintiff, *vs.* D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, defendants.

And I further certify that the November term, 1890, at which final judgment thereon was rendered, has not been finally adjourned.

In witness whereof I have hereunto set my hand and affixed the seal of said district court this 18th day of August, A. D. 1891.

[SEAL OF COURT.] (Signed) C. H. KNAPP, *Clerk.*

Appellant's costs, $94.15.
Appellees' costs, $75.00.
Transcript demanded by Goodrich & Street April 8th, 1891.
Transcript delivered to Goodrich & Street August 22nd, 1891.

63 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE W. MITCHELL, GEORGE W. MAUK, and The Bank of Napa, a Corporation, Appellee-. } No. 326.

Judgment.

This cause having heretofore been argued and submitted and by the court taken under advisement, and the court having fully considered the same and being fully advised in the premises, it is hereby ordered, adjudged, and decreed that the judgment rendered in the lower court be, and the same is hereby, affirmed; and it is further ordered that the appellee do have and recover from the appellant his costs herein expended, taxed at $—, and have execution therefor.

September 29, 1892.

64 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Appellee-. } No. 326.

Statement of facts by the supreme court of the Territory of Arizona, in the nature of a special verdict, on appeal to the Supreme Court of the United States.

This cause came on to be tried in the supreme court of Arizona, sitting as a court of appeal, on the foregoing transcript, on appeal from the district — of the second (now -hird) judicial district of Arizona, where the case was tried by the court without a jury, a jury having been expressly waived.

The supreme court takes the facts found by the district court on the trial of the cause in that court, and as agreed to by the counsel for the respective parties, as the facts in the case and makes such statement of facts as found in the transcript a part of this statement of facts.

From such transcript this court finds that the district court did not commit error in doing the things set out in any of plaintiff's bills of exceptions; that the district court did not commit error in overruling plaintiff's motion for a new trial, and as set out in his bill of exceptions in that particular; that the district court did not commit error in doing the things set out in appellant's assignment of error on appeal to the supreme court of Arizona; and this
65 supreme court further finds that the judgment of the district court ought to be affirmed, and judgment of affirmance is therefore rendered as follows, to wit:

In the Supreme Court, Territory of Arizona.

T. J. BRYAN, Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE W. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Appellees.

This cause having heretofore been argued and submitted and by the court taken under advisement, and the court having fully considered the same and being fully advised in the premises,—

It is hereby ordered, adjudged, and decreed that the judgment rendered in the lower court be, and the same is hereby, affirmed; and it is further ordered that the appellee do have and recover from

the appellant his costs herein expended, taxed at $—, and have execution therefor.

September 29th, 1892.

The above statement is correct.

BAKER & CAMPBELL,
Of Counsel for Appellees.
GOODRICH & STREET,
Attorneys for Appellants.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

66 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, George H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Appellees.

No. 326.
Opinion.

Appeal from the second judicial district—Jos. H. Kibbey, judge.

This is an action in ejectment brought in the district court of the second (now third) judicial district of Arizona Territory on the 11th day of July, 1887, by T. J. Bryan against D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, to recover block number ninety-eight, situate in the city of Phœnix, in Maricopa county, this Territory.

The property in question belonged to one J. M. Bryan, who died intestate August 29th, 1883, leaving as sole heir-at-law Vina Bryan, his widow, who subsequently married R. D. Brown. She is hereafter referred to as Vina Brown.

Plaintiff alleges ownership, deraigning title from J. M. Bryan through his estate, by conveyance from said Vina Brown.

Defendant- pleads not guilty, and further base their defense upon an equitable estoppel.

The cause was tried by the court, sitting without a jury, on the 8th day of July, 1890, and on the first day of December, 1890, the court rendered judgment in favor of defendants; from which and the order denying him a new trial plaintiff appeals.

It appears that said J. M. Bryan was indebted to one M. W. Kales,
67 which indebtedness was evidenced by a promissory note made by said Bryan on the 14th day of March, 1883, for the sum of five hundred dollars, payable on the 14th day of September, 1883, with interest at the rate of 1½ per cent. per month, to secure the payment of which note said Bryan, on the 14th day of March, 1883, made and delivered to said Kales a certain mortgage conveying said block No. 98.

To enforce the payment of the note and mortgage Kales, on the 28th of September, 1883, brought a foreclosure suit in the district court of the second judicial district of this Territory in and for the

county of Maricopa. Judgment and decree was rendered by the court on the 16th day of October, 1883, decreeing a foreclosure of the said mortgage and a sale of the property conveyed by said mortgage to satisfy the judgment for $529.37. The property was sold at public sale under said decree on the 15th day of December, 1883, and said Kales became the purchaser at said sale for the sum of $600.00.

A sheriff's certificate of sale was, upon the completion of said sale, given to said purchaser, who, on the 31st day of January, 1884, sold and assigned said certificate to the defendant D. H. Pinney in consideration of the sum of $650.00.

There being no redemption of the property, a sheriff's deed was executed and delivered to said Pinney on the 16th day of June, 1884, who went into possession of the property and has ever since by himself and his grantees been in such possession.

Subsequent to the making of said sheriff's deed Pinney conveyed portions of said property to the other defendants in this cause.

It further appears that on the 24th day of September, 1883, said Kales was appointed administrator of said Bryan's estate and acted as such until December 6, 1884, when the estate was settled and closed and the administrator discharged. No distribution of block No. 98 was made in the administration of the estate.

In the foreclosure suit Kales was plaintiff, and also, as administrator of said Bryan's estate, was defendant.

68 Plaintiff here assails the judgment and decree of foreclosure and the proceedings had thereunder in the former suit.

In determining the rights of the parties in this action we deem it unnecessary to pass upon the question of the validity of the judgment and decree in the foreclosure suit os to consider it beyond where, in connection with the facts appearing in proof, the rights contended for by the defendants were developed.

The record shows the following facts to have existed:

M. W. Kales was appointed administrator of J. M. Bryan's estate at the suggestion of Vina Bryan, the widow of said deceased Bryan. At the time of the foreclosure sale of block 98—the property in question—and for a long time afterwards she lived across the road from said land and while defendant D. H. Pinney was in the possession thereof and erecting improvements and paying taxes thereon. After the foreclosure sale she informed one Mrs. Cotton of her desire and intention to redeem the land and afterwards declined to do so. Before the time for redemption had expired she (Vina Brown) signed a paper for the purpose allowing the plaintiff in this action to redeem the property. On the day of the foreclosure sale the plaintiff was present in the town of Phœnix, where the land is situate, for the purpose of bidding on some of the property sold, but arrived too late. He afterward tried to redeem the property in question.

After the sale Mrs. Brown informed Mrs. Cotton that she was going to redeem block 98; but when informed that defendant Pinney was about to buy it she said she was glad of it and did not want to redeem it.

This declaration, however, was not communicated to said Pinney.

Between the time of the purchase of block 98 by said Pinney and the date of the commencement of this action he expended the sum of $400 in the payment of taxes, and the further sum of $4,800 in improvements on the premises. The property was sold at the foreclosure sale for its full value.

69 The note and mortgage executed to Kales by Bryan and the indebtedness secured thereby has not been paid unless it has been paid or satisfied by virtue of said sale.

From this recital of facts it seems quite satisfactory to us that Mrs. Vina Brown and the plaintiff had knowledge and must be presumed to have known of the proceedings of the probate court during the probate of her husband's estate and of the proceedings in the foreclosure suit, including the sale of the property under the decree, the purchase by the defendant Pinney, and his going into the possession of the property sold, paying taxes, and making valuable and lasting improvements thereon.

On July 11th, 1887, three years after the making of the sheriff's deed, this action was brought to divest the defendants of a possession which they held under an apparent title acquired in good faith by what they supposed to be a valid judicial sale under the sanction of a court of general jurisdiction and, as we think, a possession, owing to the line of conduct of both Mrs. Brown and the plaintiff, with their knowledge, acquiescence, and consent, during which possession valuable and lasting improvements were made by defendant Pinney.

In the case of Dickerson *vs.* Colgrove, 100 U. S., 580, upon the subject of equitable estoppel or estoppel in pais, the court says:

"The law on the subject is well settled. The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both. This remedy is always so applied as to promote the ends of justice."

In Wendell *v.* Van Renselaer, 1 Johnson (N. Y.) Ch., 344, approved in Kirk *v.* Hamilton, 102 U. S., 76, the court uses the following language:

"There is no principle better established in this court nor one founded on more solid considerations of equity and public utility than that which declares that if one man knowingly, though he does it passively by looking on, suffers another to purchase and expend money on land under an erroneous opinion of title without making knowm his claim — shall not afterwards be per-

70 mitted to exercise his legal right against such person. It would be an act of fraud and injustice, and his conscience is bound by this equitable estoppel."

And in Daniels *v.* Tearney, 102 U. S., 420:

"The principle of estoppel has its foundation in a wise and salutory policy. It is a means of repose. It promotes fair dealing. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to

our jurisprudence can by its operation secure those ends. Like the statute of limitations, it is a conservator, and without it society could not well go on."

The decree under which the sale was made may have been a nullity; likewise the sale; and plaintiff and Mrs. Brown, knowing that the claim of defendants to the property rested upon that sale, *and* for three years stood by and remained silent while defendants expended large sums of money in paying taxes and making improvements on the land.

They in effect disclaimed title in themselves.

In Evans *et al. v.* Snyder *et al.*, 64 Mo., 516, approved in Dickerson *v.* Colgrove, *supra*, the heirs assailed an administrator's sale. No order of sale could be found. This was held to be a fatal defect, but the supreme court of that State held that where they stood silently by for years while the occupant was making valuable and lasting improvements on the property and redeeming it from the lien of the ancestor's debts they would be estopped from afterwards asserting their claim.

We see no reason why the defendants may not, under the circumstances disclosed in this action, avail themselves of the doctrine of equitable estoppel in their defense.

Furthermore, in the original case there was an attempted foreclosure, followed by the sale of the mortgaged property. Kales bid the property in for the mortgage debt. Pinney, in good faith and for value, purchased and took an assignment of the certificate of sale. He thereby became the assignee of the mortgage debt if there was no valid sale of the property under the foreclosure.

71 Miner *v.* Peckman, 50 N. Y., 337.
Robinson *v.* Ryan, 25 *id.*, 320.
Jackson *v.* Bowen, 7 Cow., 13.
Cook *v.* Cooper, 22 Pac., 945.

If the decree in the original case was a nullity, the mortgage was not foreclosed; it remained in full force and unsatisfied, and the defendants entered peaceably and in good faith upon receiving the sheriff's deed for the property, and, Mrs. Brown and plaintiff having knowledge of such possession and acquiescing therein at the time Pinney made the improvements on the land, we think such possession a lawful one, and are of the opinion that the defendants' relation to the property was that of a *a* mortgagee in possession after condition broken, and they should be protected in their possession.

10 Johnson (N. Y.), 479; 30 Am. Decis., 58; 14 Wend., 233; 22 Pac., 945.

We are of the opinion that the plaintiff is not entitled to disturb the possession of the defendants.

The judgment of the lower court is affirmed.

EDMUND W. WELLS,
Associate Justice.
HENRY C. GOODING, *C. J.*

I concur in the views of the court as expressed in the foregoing opinion, not only in holding that the facts show an estoppel *in pais*, but also in holding that, assuming that the judgment in the foreclosure suit of Kales *vs.* Kales, administrator, to be void upon its face, all the facts would then exist constituting appellees mortgagees in possession after condition broken. I am, however, of the opinion that the judgment in the suit of Kales *vs.* Kales, administrator, is not open to attack in this action, for the reason stated in Bryan *vs.* Kales, decided at this term, wherein precisely the same point was presented.

RICHARD E. SLOAN, *A. J.*

72 *Minute Entry.*

In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendant- & Appellee-.

And now, in open court, on this first day of October, A. D. 1892, the appellant, by his counsel, gives notice of appeal, and hereby does acpeal, to the Supreme Court of the United States from the judgment of the supreme court of the Territory of Arizona rendered against said appellant on the 29th day of September, A. D. 1892, and prayed that said appeal be allowed, which appeal was then and there allowed by said supreme court of the Territory of Arizona.

73 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, George H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants & Appellees. No. 326.

The above-named plaintiff and appellant, conceiving himself aggrieved by the final judgment, order, and decree entered by the supreme court of the Territory of Arizona on the (29th) twenty-ninth day of September, A. D. 1892, in the above-entitled action, in which the judgment of the district court of the second (now third) judicial district of the Territory of Arizona in and for the county of Maricopa was affirmed and in which said appellees were adjudged to recover of the appellant their costs, taxed at — ($—) dollars (which district-court judgment was that plaintiff on his complaint to recover possession of all and every part of that certain block of land numbered ninety-eight (98), in the city of Phœnix, Maricopa county, Arizona, according to the maps and plat of said city made by Wm. Hancock and on file in the office of the county recorder of said Maricopa county, do recover nothing, and that defendants are

not guilty of the wrongs and trespasses alleged, and that they recover their costs in the sum of $15.80), does hereby appeal from such judgment of the supreme court of the Territory to the
74 Supreme Court of the United States and pray- that this *their* appeal may be allowed, and that a transcript of the record, proceeding, judgment, decision, and opinion in this cause be duly authenticated and sent to the Supreme Court of the United States.

T. J. BRYAN, *In Person.*
GOODRICH AND STREET,
Att'ys for Plaintiff and Appellant.

75 And now, to wit, on the thirteenth day of October, A. D. 1892, the appeal prayed for in the foregoing petition is hereby allowed, with citation to issue on filing a bond in the penal sum of five hundred (500) dollars, with two good and sufficient sureties approved by the chief justice of the supreme court of Arizona or any associate justice thereof.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

76 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants & Appellees. } (326.)

Affidavit of Value.

TERRITORY OF ARIZONA, *County of Maricopa,* } *ss:*

T. J. Bryan, being duly sworn, says that he is the plaintiff in the district court and appellant herein; that he is acquainted with the value of the property in dispute and amount in controversy in this case described in the complaint, and that — value of said property is over five thousand dollars and is of the value of ten thousand ($10,000.00) dollars, and that the value of the amount in controversy in this cause, exclusive of costs, is over five thousand dollars and is of the value of ten thousand ($10,000.00) dollars.

Affiant says that he is not aware that the record in said cause shows the value of such property in said controversy, and that this affidavit is made for the purpose of truly showing the value thereof to be above five thousand dollars, exclusive of costs, and for
77 the purpose of perfecting an appeal of said cause to the Supreme Court of the United States and of showing said court that they have jurisdiction of said cause on appeal so far as the value of the property or the amount in controversy is concerned.

T. J. BRYAN.

I concur in the views of the court as expressed in the foregoing opinion, not only in holding that the facts show an estoppel *in pais*, but also in holding that, assuming that the judgment in the foreclosure suit of Kales *vs.* Kales, administrator, to be void upon its face, all the facts would then exist constituting appellees mortgagees in possession after condition broken. I am, however, of the opinion that the judgment in the suit of Kales *vs.* Kales, administrator, is not open to attack in this action, for the reason stated in Bryan *vs.* Kales, decided at this term, wherein precisely the same point was presented.

RICHARD E. SLOAN, *A. J.*

72 *Minute Entry.*

In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendant- & Appellee-.

And now, in open court, on this first day of October, A. D. 1892, the appellant, by his counsel, gives notice of appeal, and hereby does acpeal, to the Supreme Court of the United States from the judgment of the supreme court of the Territory of Arizona rendered against said appellant on the 29th day of September, A. D. 1892, and pray*ed* that said appeal be allowed, which appeal was then and there allowed by said supreme court of the Territory of Arizona.

73 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, George H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants & Appellees. } No. 326.

The above-named plaintiff and appellant, conceiving himself aggrieved by the final judgment, order, and decree entered by the supreme court of the Territory of Arizona on the (29th) twenty-ninth day of September, A. D. 1892, in the above-entitled action, in which the judgment of the district court of the second (now third) judicial district of the Territory of Arizona in and for the county of Maricopa was affirmed and in which said appellees were adjudged to recover of the appellant their costs, taxed at — ($—) dollars (which district-court judgment was that plaintiff on his complaint to recover possession of all and every part of that certain block of land numbered ninety-eight (98), in the city of Phœnix, Maricopa county, Arizona, according to the maps and plat of said city made by Wm. Hancock and on file in the office of the county recorder of said Maricopa county, do recover nothing, and that defendants are

not guilty of the wrongs and trespasses alleged, and that they recover their costs in the sum of $15.80), does hereby appeal from such judgment of the supreme court of the Territory to the
74 Supreme Court of the United States and pray- that this *their* appeal may be allowed, and that a transcript of the record, proceeding, judgment, decision, and opinion in this cause be duly authenticated and sent to the Supreme Court of the United States.

T. J. BRYAN, *In Person.*
GOODRICH AND STREET,
Att'ys for Plaintiff and Appellant.

75 And now, to wit, on the thirteenth day of October, A. D. 1892, the appeal prayed for in the foregoing petition is hereby allowed, with citation to issue on filing a bond in the penal sum of five hundred (500) dollars, with two good and sufficient sureties approved by the chief justice of the supreme court of Arizona or any associate justice thereof.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

76 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants & Appellees. } (326.)

Affidavit of Value.

TERRITORY OF ARIZONA, *County of Maricopa,* } *ss:*

T. J. Bryan, being duly sworn, says that he is the plaintiff in the district court and appellant herein; that he is acquainted with the value of the property in dispute and amount in controversy in this case described in the complaint, and that — value of said property is over five thousand dollars and is of the value of ten thousand ($10,000.00) dollars, and that the value of the amount in controversy in this cause, exclusive of costs, is over five thousand dollars and is of the value of ten thousand ($10,000.00) dollars.

Affiant says that he is not aware that the record in said cause shows the value of such property in said controversy, and that this affidavit is made for the purpose of truly showing the value thereof to be above five thousand dollars, exclusive of costs, and for
77 the purpose of perfecting an appeal of said cause to the Supreme Court of the United States and of showing said court that they have jurisdiction of said cause on appeal so far as the value of the property or the amount in controversy is concerned.

T. J. BRYAN.

Subscribed and sworn to before me this 12th day of October, A. D. 1892.

[SEAL.] T. D. HAMMOND,
Clerk of Supreme Court.

78 In the Supreme Court of the Territory of Arizona.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, George H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants & Appellees. } No. 326.

THE UNITED STATES OF AMERICA, *ss:*

To D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and the Bank of Napa, a corporation:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the third Monday of a term thereof commencing on the second Monday of October, A. D. 1892, pursuant to and in answer to an appeal allowed by the supreme court of the Territory of Arizona, as appears by the record of said court, in open court at the term thereof at which the judgment appealed from was rendered, to wit, on the first day of October, A. D. 1892, and again allowed on the thirteenth day of October, A. D. 1892, by the chief justice of the supreme court of the Territory of Arizona from a judgment of the supreme court of the Territory of Arizona entered therein on the twenty-ninth day of September, A. D. 1892, and less than thirty days before the first day of the said term of the said Supreme Court of the United
79 States, in favor of your*your*selves, D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, and against T. J. Bryan, affirming the judgment theretofore rendered by the district court of the second (now third) judicial district of Arizona (which district-court judgment was that plaintiff, on his complaint to recover possession of all and every part of that certain block of land numbered ninety-eight (98), in the city of Phœnix, Maricopa county, Arizona, according to the map and plat of said city made by Wm. Hancock and on file in the office of the county recorder of said Maricopa county, do recover nothing, and that defendants are not guilty of the wrongs and trespasses alleged, and that they recover their costs in the sum of $15.80), and to show cause, if any there be, why the said judgment rendered against the appellant in your favor should not be reversed, set aside, and corrected, and why judgment should not be rendered for the appellant and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this thirteenth day of October, in the year of our Lord one thousand eight hundred and ninety-two.

HENRY C. GOODING,
Chief Justice of the Supreme Court of the Territory of Arizona.

80 TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

This is to certify that we, the attorneys of record for said D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, appellees mentioned in the above citation, hereby admit and accept service of the above citation and acknowledge receipt of certified copy of the same at Phœnix, Arizona, the fourteenth day of October, A. D. 1892.

BAKER & CAMPBELL,
Att'ys for Appellees.

81 In the Supreme Court of the United States.

T. J. BRYAN, Plaintiff & Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants & Appellees. } No. 326.

Know all men by these presents that we, T. J. Bryan, as principal and appellant herein, and C. H. Gray and W. T. Smith, both of Maricopa county, Territory of Arizona, being sureties for said principal, are held and firmly bound unto D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, the appellees herein, in the sum of five hundred ($500.00) dollars, to be paid to them, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this thirteenth day of October, A. D. 1892.

82 Whereas the above-named appellant, T. J. Bryan, has obtained an allowance of appeal; has taken and prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered and entered against him in favor of D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, the appellees herein, in the supreme court of the Territory of Arizona, on the twenty-ninth day of September, A. D. 1892, in an action then and there pending between them:

Now, the conditions of this obligation are such that if the above-named appellant shall prosecute his appeal to effect and shall answer all damages and costs if he fail to make his plea good, then this obligation to be void; otherwise to remain in full force and virtue.

Sealed with our seals and dated this thirteenth day of October, A. D. 1892.

T. J. BRYAN. [SEAL.]
C. H. GRAY. [SEAL.]
W. T. SMITH. [SEAL.]

Sealed and delivered in the presence of—
WEBSTER STREET.

83 TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

On this thirteenth day of October, 1892, before me personally came T. J. Bryan, C. H. Gray, and W. T. Smith, known to me to be the same persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this thirteenth day of October, 1892.

[SEAL.] T. D. HAMMOND,
Clerk of Supreme Court of Arizona.

TERRITORY OF ARIZONA, } ss:
County of Maricopa, }

C. H. Gray and W. T. Smith, the sureties, being duly sworn, depose and say, each for himself, that he is a resident of Maricopa county, Arizona, and that he is worth double the sum of five hundred dollars ($500) over and above all his debts and liabilities, exclusive of property exempt from execution.

C. H. GRAY.
W. T. SMITH.

Subscribed and sworn to before me this 20th day of October, A. D. 1892.

[SEAL.] T. D. HAMMOND,
Clerk of Supreme Court, Territory of Arizona.

I hereby approve the above bond and the sufficiency of the sureties thereto.

HENRY C. GOODING,
Chief Justice of the Supreme Court of Arizona.

84 In the Supreme Court of the United States.

T. J. BRYAN, Plaintiff and Appellant,
vs.
D. H. PINNEY, MARY E. PINNEY, M. H. SHERMAN, GEORGE H. Mitchell, George W. Mauk, and The Bank of Napa, a Corporation, Defendants and Appellees.

Appellant's Assignment of Errors to the Supreme Court of the United States.

Comes now the appellant and assigns as error as follows, to wit:

The supreme court of the Territory of Arizona, sitting as a court of appeal and reviewing the proceedings of the district court, erred in not finding that the district court erred on the trial of the cause—

First. In allowing as evidence the mortgage given by J. M. Bryan to M. W. Kales, dated on the 14th day of March, 1883, and the note

set out in the mortgage, as specified in plaintiff's first bill of exceptions.

Second. In allowing as evidence the judgment-roll in the case of M. W. Kales against M. W. Kales, administrator, being district court case No. 326, as specified in plaintiff's second bill of exceptions.

Third. In allowing as evidence the sheriff's return thereon issued on the judgment and decree in case No. 326, as specified in
85 plaintiff's third bill of exceptions.

Fourth. In allowing as evidence the certificate of sale from L. H: Orme to M. W. Kales, as specified in plaintiff's fourth bill of exceptions.

Fifth. In allowing as evidence the sheriff's deed from L. H. Orme, sheriff, to D. H. Pinney, as specified in plaintiff's fifth bill of exceptions.

Sixth. In allowing as evidence the deed from D. H. Pinney to Bank of Napa for part of premises described, and a deed to F. Q. Story for a part of premises described, and a deed from Story for a part of premises described, as specified in plaintiff's sixth bill of exceptions.

Seventh. In allowing in evidence a certified copy of the complaint in the case of T. J. Bryan against L. H. Orme, M. W. Kales, and D. H. Pinney, filed July 20th, 1887, for block 98, as specified in plaintiff's seventh bill of exceptions.

Eighth. In allowing in evidence a conversation between Mrs. Cotton and Mrs. Vina Bryan in regard to block 98, in regard to Mr. Cotton's purchasing her redemption, and in regard to D. H. Pinney purchasing her redemption, as is specified in plaintiff's eighth bill of exceptions.

Ninth. In allowing as evidence from the witness Pinney in his own behalf that at the time he purchased the property he had but little acquaintance with the people of Salt River valley, and that he didn't know perhaps fifty men in the county at the time, as specified in plaintiff's ninth bill of exceptions.

Tenth. The supreme court erred in not finding that the district court erred in overruling plaintiff's general demurrer and special demurrer to the amended answer and in allowing the amended answer to stand, as specified in plaintiff's tenth bill of exceptions; and in overruling filed December 22nd, 1887, and in over-
86 ruling the demurrer filed July 7th, 1890, and in overruling the demurrer entered on records of court, page 195, on July 12th, 1890.

Eleventh. The supreme court erred in not finding that the district court erred in rendering judgment for the defendant instead of for the plaintiff on the whole evidence, and for that the — is contrary to the law and the evidence and is unsupported by the evidence.

Twelfth. The supreme court — in not finding that the district court erred in overruling plaintiff's motion for a new trial and in holding that the errors alleged to have been committed by the district court, as specified in paragraphs 1, 2, 3, 4, 5, 6 in plaintiff's bill of

exceptions to the overruling of his motion for a new trial, were not errors sufficient to grant a new trial.

Thirteenth. The supreme court erred in not finding that the district court erred in not rendering a judgment for the plaintiff instead of for the defendant upon the whole evidence, for that the whole evidence shows that under the law the plaintiff was the owner and entitled to the land in dispute, and was entitled to the possession of it and had been ousted therefrom by defendants, and that defendants were in possession against plaintiff's right of possession; that the judgment and certificates of sale from the sheriff and the sheriff's deed and all subsequent deeds thereon by which defendant got into possession were void and gave defendants no right or title or right to the possession of any part of the premises.

Fourteenth. The supreme court erred in not reversing the judgment of the district court.

Fifteenth. The supreme court erred in affirming the judgment of the district court.

87 Sixteenth. The supreme court erred in not rendering a judgment for the plaintiff and appellant and in holding that the plaintiff and appellant could not recover in this action the property sued for.

GOODRICH AND STREET,
Attorneys for Appellant.

88 *Prayer for Reversal.*

Wherefore appellant prays:

First. That the judgment of the supreme court of Arizona affirming the judgment of the district court be set aside and reversed.

Second. That the Supreme Court of the United States re-der judgment as the supreme court of Arizona should have rendered and as the district court should have rendered, and that they adjudge that this appellant and plaintiff have judgment against the defendants and appellees for the possession of the premises in dispute.

Third. If this Supreme Court shall not proceed to render judgment, then that plaintiff and appellant have a new trial.

GOODRICH AND STREET,
Attorneys for Appellant.

89 SUPREME COURT, *Territory of Arizona,* } *ss:*

I, T. D. Hammond, clerk of the supreme court of the Territory of Arizona, do hereby certify that the foregoing written and printed pages, numbered from 1 to —, are a full, true, and correct transcript of the record and proceedings in the cause Thomas J. Bryan *vs.* D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa, a corporation, as the same appears of record and on file in my office, including—

The transcript on appeal from the district court of the second judicial district of Arizona in and for Maricopa county to the supreme court of Arizona.

The minute entries and judgment of said supreme court affirming the judgment of said district court.

The opinion of the judges in affirming said judgment and the proceedings on appeal from the judgment of the supreme court of Arizona to the Supreme Court of the United States, including—

Notice of appeal in open court.
Petition for allowance of appeal.
Allowance of appeal.
Oath as to value of property.
Bond on appeal.
Citation to defendants and service of same.
Statement of facts.
Assignment of errors.
Prayer of reversal.

Seal Supreme Court of Arizona.

Witness my hand and the seal of said court this 22nd day of November, A. D. 1892.

T. D. HAMMOND,
Clerk of Supreme Court of Arizona.

Endorsed on cover: Case No. 15,227. Arizona Territory supreme court. Term No., 489. T. J. Bryan, appellant, *vs.* D. H. Pinney, Mary E. Pinney, M. H. Sherman, George H. Mitchell, George W. Mauk, and The Bank of Napa. Filed December 8th, 1892.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1909.

No. 2[illegible] Z.

T. J. BRYAN, APPELLANT,

vs.

GEORGE T. BRASIUS, HENRY W. RYDER, JOHN FRIES, JAMES McCARTHY, GEORGE LORING [illegible] BACON.

APPEAL FROM THE SUPREME COURT OF THE [illegible] OF ARIZONA.

FILED [illegible]

(15,225.)